

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Resident Insurance
Producer License Application of
Brittany Tarrolly

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis on April 5, 2012, at the Office of Administrative Hearings in St. Paul. The record closed at the conclusion of the Hearing that day.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Brittany Tarrolly (Applicant) appeared without counsel, on her own behalf.

STATEMENT OF ISSUES

1. Has the Applicant proven by a preponderance of the evidence that she is qualified to act as an insurance producer within the meaning of Minn. Stat. § 45.027, subd. 7 (2010) in spite of her conviction for misdemeanor theft in early 2011?

2. Did Applicant violate Minn. Stat. § 60K.43, subd. 1(6), by committing a crime involving moral turpitude?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Brittany Tarrolly, who was born March 1, 1991, entered a Cub Foods store on March 12, 2011. She picked out several items and concealed them in her purse. The Applicant left the store without paying for the merchandise, which was valued at \$58.45.¹

2. When the Applicant was confronted, she said she needed to get to work and could not go back inside the store. She requested to pay the ticket and leave.²

¹ Exhibit 1, Exhibit 3.

² Testimony of Brittany Tarrolly.

3. Ms. Tarrolly initially handed the investigators her sister's driver's license when asked to identify herself. Her immediate intent was to deflect the guilt away from herself.³

4. The Applicant admitted stealing the merchandise from Cub Foods although she had over \$300.00 in her possession.⁴

5. On April 12, 2011, Ms. Tarrolly was charged with Count 1, a gross misdemeanor, Giving Peace Officer False Name – Name of Another Person, and Count 2, a misdemeanor, Theft-Take/Use/Transfer Movable Property Without Consent.⁵

6. On May 19, 2011, Ms. Tarrolly entered a plea of guilty to Count 2, misdemeanor theft. Count 1 was dismissed. She was fined \$1,000.00.⁶

7. On October 20, 2011, Ms. Tarrolly submitted an application for licensure as an insurance producer bail bonds agent in Minnesota. She was 20 years old at the time of the application, as she was at the time of her crime.⁷

8. On her application, the Applicant answered "Yes" to the following question:

"Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?"⁸

9. The Applicant provided a written statement together with a copy of the Register of Actions relative to her charge/conviction. She did not provide a copy of the Criminal Complaint or the Sentencing Order.⁹

10. On December 28, 2011, at the Department's request, Ms. Tarrolly submitted the Criminal Complaint and Sentencing Order.¹⁰

11. The Applicant is employed at Goldberg Bonding. Her duties at the bail bond company have been primarily clerical (answering phones, counting money, filling out paperwork, taking care of the files), but she has not been working as a bail bonds agent.¹¹

12. If Ms. Tarrolly is granted the insurance producer's license, she would be able to post a bail bond and release a defendant from custody.¹²

³ *Id.*

⁴ Exhibit 3, *Id.*

⁵ Exhibit 3.

⁶ Exhibit 2; *Id.*

⁷ Exhibit 1, Testimony of Cheryl Costello.

⁸ Exhibit 1.

⁹ Testimony of Costello.

¹⁰ *Id.*

¹¹ Testimony of Tarrolly.

¹² *Id.*

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subd. 7(b), and 60K.43, subd. 2.

2. The Notice of Hearing was proper and the Department complied with all procedural requirements.

3. Under Minn. Stat. §§ 45.027, subd. 7 and 60K.43, subds. 1(6) and 1(8), the Commissioner may deny a license when a person has engaged in an act or practice which demonstrates that the applicant is unqualified to act under the authority of a license or has committed a crime involving moral turpitude.

4. The Applicant has violated Minn. Stat. §§ 45.027, subd. 7 and 60K.43, subds. 1(6) and 1(8).

5. The burden of proof is on Ms. Tarrolly to prove by a preponderance of the evidence that her Application for Licensure should be granted. She has failed to meet that burden.

6. A denial of the application of Brittany Tarrolly for licensure as an insurance producer-bail bonds agent is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(1).

7. It is appropriate to deny Ms. Tarrolly's application for an insurance producer-bail bonds agent license at this time.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the **DENIAL** of the Insurance Producer License application of Brittany Tarrolly be **AFFIRMED**.

Dated: April 3rd, 2012

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Recorded Digitally
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Michael Rothman, Commissioner, Attn: Melissa Knoepfler, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, phone number (651)296-2715 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Applicant has not proven she is entitled to a Resident Insurance Producer's License because she was recently convicted of theft, which the Department notes correctly is a crime involving moral turpitude. Minn. Stat. § 45.027, subd. 7 specifies that the Commissioner of Commerce may deny an application for a Resident Insurance Producer's License if the Commissioner finds that it is in the public interest to do so, and the Applicant has violated any law related to the duties and responsibilities entrusted to the Commissioner.

Ms. Tarrolly's recent theft crime relates directly to the occupation of bail bonds agent. She has not established a clean record for long enough at this point to establish the requisite financial responsibility or trustworthiness necessary for licensure as a Resident Insurance Producer. Although Ms. Tarrolly expressed remorse at the hearing, the time period for demonstrating rehabilitation from the Applicant's crime is too short. She committed a crime of moral turpitude (theft) barely over one year ago. Granting a convicted shoplifter a license that imposes fiduciary responsibilities barely a year past the time of her offense would be premature and imprudent. Ms. Tarrolly's application should be denied.

R.C.L.